

Choose Your Entity

By *JUSTIN H. DION*

Once an individual has made the decision to go into business, a careful analysis must be performed to decide the best business entity to fit his or her needs. In Massachusetts, a number of options exist that can facilitate the growth of your practice, while still providing you with the safeguards needed to reduce personal liability.

• Sole Proprietorship: A sole proprietorship is simply an unincorporated individual starting a practice, with assets he or she owns in his or her own name alone. In addition to personally owning all of the business assets, a sole proprietor also retains all of the business liabilities and debts. Although a sole proprietorship is completely transferable by the owner, the proprietorship terminates upon the death of the practitioner. There is no Massachusetts statute that governs the organization of a sole proprietorship; therefore no formal organization documents are required prior to starting this type of business. However, Massachusetts law requires that any person engaged in business under a name that is different than his or her own to file a business certificate with the town clerk's office for the town/city in which they operate.

Sole proprietorships also have certain tax benefits when compared to some of the other formations, in that profits are only taxed once as personal income attributed to health care practitioners. This is in contrast to the double taxation issues discussed below. Although a sole proprietorship is simple to form, and may

have some tax benefits, it is generally not recommended that individuals engage in them because usually the personal liability far exceeds any benefit relating to the ease of creation.

• General Partnership: Along the same lines as the sole proprietorship, a general partnership is simply an association of two or more unincorporated practitioners who conduct business as a joint venture. As with a sole proprietorship, one of the benefits of engaging in business as a general partnership is ease of startup. A general partnership may be formed by a simple written or oral agreement. Although a written agreement is not necessary to form a general partnership, it is obviously desirable to clearly define each practitioner's role in the business by written instrument. Unless the parties agree otherwise, each practitioner has an equal say in the management of the practice, as well as sharing the risks and liabilities. A practitioner's interest in a general partnership is generally assignable to another practitioner; however, the transfer is subject to the approval of the other remaining partners.

Generally, the tax treatment is similar to that of a sole proprietorship in that all income is taxed at the personal level only. Although easy to set-up, like the sole proprietorship, it is recommended that most practitioners avoid this type of entity since partners are jointly and severally liable for the partnership's obligations.

• C Corporation / S Corporation: Generally, after a practitioner has carefully weighed

the important factors involved in choosing a business entity type, such as ease of set-up, taxation issues, personal liability, etc., most health care practitioners will decide on some type of formal corporate entity. The first option is the subchapter C corporation. In general, a corporation is a separate legal entity that exists apart from its owners (referred to as the stockholders) that is able to own assets and incur liabilities. Therefore a corporation can sue, and be sued. A corporation has many benefits to a practitioner, including a reduction in personal liability of debts and obligations owed by the business. Although some types of behavior may still expose the practitioner to personal liability, generally it is the corporation itself that will be sued, and hence be financially liable.

Despite the fact that the cost and formality required to organize a corporation may be higher than some other business forms, the shield from most personal liabilities often makes the expense worth consideration. Despite the benefits of a personal shield, one potential drawback deals with taxation. In many instances, income generated by the corporation is "double taxed," meaning the corporation pays taxes when the income is earned by the company, and then the practitioners pay taxes again when a distribution/paycheck is issued to them.

As an alternative to the formation of a subchapter C corporation, many practitioners looking for the benefits instilled by a corporate entity may choose to do business as a subchapter S Corporation ("S-Corp"). An S-Corp is a small business corpora-

tion with a statutorily limited number of shareholders. Generally, an S-Corp offers the benefit of protection from personal liability similar to that of a traditional corporation, except the S-Corp designation often allows the corporation to avoid double taxation. In an S-Corp, taxes are generally only paid by the individual practitioner upon receipt of income.

• Limited Liability Company / Limited Partnership: In recent years, more practitioners have been looking to have the personal liability protection offered by the corporate business form, yet have a less complicated and stringent management system similar to that of a general partnership. These desires have produced a hybrid business formation option, namely the limited liability company (LLC). For many, the LLC's offers the best of all worlds, as most LLC's offer some limited liability, an easier management system, and yet still avoid double taxation.

Overall, any individual or group must carefully consider and decide what entity is right for his or her needs. The analysis may take substantial time, as well as a careful consideration of many factors. The wrong choice could potentially create a financial disaster.

Justin H. Dion is an associate with Springfield-based Bacon & Wilson, P.C., and a member of the bankruptcy department, with expertise in the areas of bankruptcy, corporate law, debt restructuring and loan workouts; (413) 781-0560; jdion@bacon-wilson.com.